

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF REVENUE

In the Matter of the Revocation of the Master Electrician Class A License of Laurence R. Otto	FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION
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The above-entitled matter came on for hearing before Barbara L. Neilson on October 8, 2010, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. The Respondent participated by videoconference from the Roseau County Courthouse, 606 5th Avenue SW, Roseau, Minnesota. The OAH record remained open until October 15, 2010, so that the Respondent could submit a written response, if desired, to the Department's calculation of taxes due for the years 2001 through 2005. No written response was received.

Joan M. Tujetsch, Attorney, Minnesota Department of Revenue, Mail Station 2220, 600 North Robert Street, St. Paul, Minnesota 55146-2220, appeared for the Department of Revenue (Department).

Laurence R. Otto (Respondent) appeared for himself without counsel.

STATEMENT OF ISSUE

Should the Department issue a Notice of License Revocation to the Minnesota Department of Labor and Industry requiring that Respondent's Master Electrician Class A license be revoked for failure to pay income taxes for the years 2001 through 2005?

The Administrative Law Judge concludes that the Department should send the notice to revoke the license.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Laurence R. Otto holds Master Electrician Class A license number AM06421 issued by the Minnesota Department of Labor and Industry.¹

¹ Testimony of David McCiung.

2. The Respondent failed to file individual income tax returns for the several of those years and calculated that the Respondent owed more than \$50,000 in unpaid taxes.

3. On January 26, 2010, the Department of Revenue served the Notice and Order for Hearing in this matter on the Respondent by U.S. mail. The Notice and Order for Hearing alleged that the Respondent had failed to file individual income tax returns for the years 2007 and 2008 and that he had failed to pay income taxes due.²

4. After being served with the Notice and Order for Hearing in this matter, the Respondent retained Gregory C. Boynton, a certified public accountant. On behalf of the Respondent, Mr. Boynton filed returns for the years 2001 through 2009. The Respondent also provided the Department with a business financial statement.³

5. Based on the returns for the years 2001 through 2005, the Respondent owes \$34,607.42 in taxes, penalty, and interest as of the date of the hearing.⁴

6. The hearing was rescheduled several times at the request of the Respondent to allow the parties time to attempt to reach agreement on a repayment schedule; however, no agreement was reached.⁵

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Department and the Administrative Law Judge have authority to consider the issues set out in the Notice and Order for Hearing and to take the action proposed under Minn. Stat. § 14.50 and 270C.72, subd. 3 (2008).⁶

2. The Department gave proper notice of the hearing in this matter to the Respondent and has complied in all other respects with the procedural requirements of law and rule.

3. Minn. Stat. § 270C.72, subd. 1, provides in relevant part:

The state or a political subdivision of a state may not issue, transfer, or renew, and must revoke, a license for the conduct of a profession, occupation, trade, or business, if the commissioner notifies the licensing authority that the applicant owes the state delinquent taxes, penalties, or interest. The commissioner may not notify the licensing authority unless the applicant taxpayer owes \$500 or more in delinquent taxes, penalties, or interest, or has not

² Affidavit of Mail to Last Known Address (Jan. 26, 2010).

³ Testimony of Gregory Boynton.

⁴ Exhibit 1.

⁵ Test. of D. McClung; Test. of G. Boynton.

⁶ All statutory citations are to the 2008 edition.

filed returns. If the applicant taxpayer does not owe delinquent taxes, penalties, or interest, but has not filed returns, the commissioner may not notify the licensing authority unless the taxpayer has been given 90 days' written notice to file the returns or show that the returns are not required to be filed.

4. As of October 8, 2010, the Respondent owed the State of Minnesota \$34,607.42 in delinquent taxes, penalties, and interest.

5. The Department has met the statutory requirements for notifying the Commissioner of Labor and Industry that Respondent's Master Electrician Class A license should be revoked.

Based upon the foregoing Conclusions of Law, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED: that the Commissioner of Revenue issue a Notice of License Revocation to the Minnesota Department of Labor and Industry indicating that the Department of Labor and Industry must revoke Respondent's Master Electrician Class A license.

Dated: November 8, 2010

s/Barbara L. Neilson

BARBARA L. NEILSON

Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Revenue will make the final decision after a review of the record. The Commissioner may adopt, reject, or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner of Revenue shall not be made until this report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this report to file exceptions and present argument to the Commissioner of Revenue. Parties should contact Joan M. Tujetsch, Attorney, Legal Services Section, Mail Station 2220, St. Paul, MN 55146-2220 (telephone number (651) 296-8228) for specifics of how to file to the report, or upon the expiration of the deadline for doing so. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes. Pursuant to Minn. Stat. § 14.62, subd. 1, the Commissioner is

required to serve the final decision upon each party and the Administrative Law Judge by first-class mail.

MEMORANDUM

The Respondent has taken some significant steps since this matter was initiated. He obtained the assistance of a CPA and has filed missing tax returns for 2001-2009. Unfortunately, he has not been able to reach agreement with the Department on a repayment plan for the outstanding taxes, penalties, and interest he owes. In such a situation, Minnesota law authorizes the Department to notify the appropriate state licensing authority that a licensee owes \$500 or more in delinquent taxes, penalties, and interest, and requires that the licensing authority thereafter revoke the individual's license for the conduct of a profession, occupation, trade, or business. Because revocation of the Respondent's Class A Master Electrician License undoubtedly will make it even more difficult for him to obtain the resources to pay his tax liability, it is hoped that the parties will be able to reach agreement on a repayment plan before that occurs.

B.LN.